holds that a prosecution for contempt is not barred by the federal Statute of Limitations for crimes, seems correct on this ground.[21] *In re Gompers*, 39 Wash. L. R. 761 (D. C., Sup. Ct.). Also, in the absence of any clear intention, general statutory provisions for criminal offenses, like general common-law principles of the criminal law, should not be applied to contempt, if they conflict with its characteristic procedure. But otherwise contempt should be treated as other crimes, because like them it is in its nature a wrong to the state.

CONSTITUTIONALITY OF STATUTORY ADMINISTRATION ON ESTATE OF ABSENTEE IRRESPECTIVE OF DEATH. — Administration of abandoned property during the absence of the owner is generally recognized as a right and duty of the sovereign under the Civil Law,[1] and so was early introduced into Louisiana.[2] It has had little development in the other states, suffering undoubtedly from confusion with the ordinary common-law administration of estates.[3] Since that depended upon the termination of the previous title by death,[4] the mere finding by the probate court could not be conclusive of the fact of death, as against a living absentee, even in collateral proceedings.[5] Statutes [6] requiring the question to be adjudicated, or recognizing the common-law presumption arising from seven years' absence [7] as sufficient evidence of death, failed to protect administrators and innocent third parties, for they did not purport to confer a new jurisdiction to deprive a living man of his title in favor of others.[8] But the decision of the Supreme Court to this effect [9] was widely and long construed as denying the power of the state, through appropriate legislation, to exercise a distinct jurisdiction over the property itself irrespective of the death of the owner, based solely upon his continued absence without tidings.[10]

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[21] U. S. REV. STAT., 1875, § 1044. See Matheson *v.* Hanna-Schoellkopf Co., 122 Fed. 836. *Cf.* Beattie *v.* People, 33 Ill. App. 651; Gordon *v.* Commonwealth, 141 Ky. 461, 133 S. W. 206. The federal statute reads: "No person shall be prosecuted . . . unless the indictment is found, or the information is instituted within three years next after such offense shall have been committed." Contempt is usually prosecuted on affidavit, or on the court's own motion. Furthermore, contempt is not classified among the other crimes in the U. S. Revised Statutes.

[1] WRIGHT, FRENCH CIV. CODE, § 112 *et seq.*; LOEWY, GERMAN CIV. CODE, § 1911 *et seq.*

[2] MERRICK'S LA. REV. CIV. CODE, 1900, art. 47 *et seq.*

[3] See 19 HARV. L. REV. 535; 22 *id.* 522.

[4] Devlin *v.* Commonwealth, 101 Pa. St. 273. See Mutual Benefit Ins. Co. *v.* Tisdale, 91 U. S. 238, 243; Melia *v.* Simmons, 45 Wis. 334.

[5] Jochumsen *v.* Suffolk Savings Bank, 3 All. (Mass.) 87. See Griffith *v.* Frazier, 8 Cranch (U. S.) 9, 23.

[6] See Roderigas *v.* East River Savings Institution, 63 N. Y. 460; Selden's Exr. *v.* Kennedy, 104 Va. 826, 52 S. E. 635.

[7] Wentworth *v.* Wentworth, 71 Me. 72.

[8] Lavin *v.* Emigrant, etc. Bank, 1 Fed. 641. See Thomas *v.* People, 107 Ill. 517, 526, 527.

[9] Scott *v.* McNeal, 154 U. S. 34, 14 Sup. Ct. 1108.

[10] Carr *v.* Brown, 20 R. I. 215, 38 Atl. 9; Beck's Estate, 15 Pa. Co. Ct. R. 564. See Clapp *v.* Houg, 12 N. D. 600, 608, 98 N. W. 710, 713; Lavin *v.* Emigrant, etc. Bank, *supra*, 675.

Finally, a second important case [11] on a Pennsylvania statute decided that, by providing for due process of law through a hearing, after notice by publication, the property apparently abandoned could be disposed of, so as to bind an owner absent for seven years, though still alive, at least to the extent of charging it with his obligations and the expenses of an administration similar to that of Continental countries.[12] The occasion for such an exercise of the police power lies not only in collecting and conserving the debts and other property, satisfying thereby the claims of creditors and families left without provision, and preserving the interests of presumptive next of kin from the adverse claims of intruders, but in the even more manifest public policy of protecting property rights in general from the effects of particular instances of neglect and uncertainty of title.[13]

A few state statutes have since provided for a merely temporary administration.[14] Their chief purpose of giving stability to property rights would seem, however, to require some reasonable limit to the time within which the absentee can reassert his title. But the particular Pennsylvania statute [15] held to be constitutional, in the case above, although providing further for the distribution of the *corpus* of the estate among the next of kin, required them to give security for its restoration, with interest, should the absentee return.[16] Here again, *dicta*, interpreted to make this safeguard essential to constitutionality,[17] gave like form to most of the limited amount of legislation on the subject [18] and would have overthrown statutes of Indiana and Iowa which ventured to provide for a final and conclusive distribution, after the stipulated period of absence.[19]

But that there can constitutionally be such a conclusive distribution of an absentee's estate is established by a recent decision on a Massachusetts statute.[20] *Blinn* v. *Nelson*, 32 Sup. Ct. 1. The title of the owner is barred on the principle of ordinary statutes of limitations [21] and his

[11] Cunnius *v.* Reading School District, 198 U. S. 458, 25 Sup. Ct. 721.

[12] *Cf.* Attorney-General *v.* Provident Institution, 201 Mass. 23, 86 N. E. 912; Deaderick *v.* County Court, 1 Cold. (Tenn.) 202. See People *v.* Ryder, 65 Hun (N. Y.) 175, 176.

[13] See Cunnius *v.* Reading School District, 206 Pa. St. 469, 56 Atl. 16.

[14] 3 COMP. LAWS, MICH., 1897, 2857; GEN. LAWS, R. I., 1909, c. 315, p. 1145. Such administration lasts until the death or survival of the owner is established.

[15] PA. LAWS, 1885, 155, 1 PURDON'S DIGEST, 13 ed., 1075.

[16] Under this statute, the court has dispensed with the requirement of security where the absence has continued for over twenty years before distribution. *In re* Morrison's Estate, 183 Pa. St. 155, 38 Atl. 895.

[17] Savings Bank of Baltimore *v.* Weeks, 103 Md. 601, 64 Atl. 295. See Selden's Exr. *v.* Kennedy, 104 Va. 826, 829, 52 S. E. 635, 637; 19 HARV. L. REV. 535.

[18] CONN. GEN. STAT., 1902, §§ 252, 319; MERRICK'S LA. REV. CODE, 1900, arts. 57, 70, 73; MD. LAWS, 1908, c. 125, p. 260; 2 N. J. GEN. STAT., 1896, 2404; VA., POLLARD, ANN. CODE, SUPP., 1910, 828; VT. PUB. STAT., 1906, §§ 2773, 2994.

[19] 1 BURNS' ANN. IND. STAT., 1908, §§ 2747–2752; IA. CODE, SUPP., 1907, § 3307. The Indiana statute by its terms applies to real as well as to personal property. These statutes have been held to be constitutional by the state courts. Barton *v.* Kimmerley, 165 Ind. 609, 76 N. E. 250; New York Life Ins. Co. *v.* Chittenden, 134 Ia. 613, 112 N. W. 96.

[20] MASS. REV. LAWS, 1902, c. 144.

[21] See Nelson *v.* Blinn, 197 Mass. 279, 83 N. E. 889. As to the length of the period, this statute is not an abuse of the legislative discretion. *Cf.* Terry *v.* Anderson, 95 U. S. 628; Wheeler *v.* Jackson, 137 U. S. 245, 11 Sup. Ct. 76.

next of kin become entitled, by the lapse of fourteen years from his disappearance, or of one year from the appointment of a temporary administrator when preceded by over thirteen years of absence. This statute, with comprehensive simplicity, provides at the same time for temporary conservation and administration, begun by a seizure of the property as well as by published notice. It has the added virtue that it applies expressly to both real and personal property.[22]

VALUATION OF PROPERTY OF PUBLIC SERVICE COMPANY AS BASIS FOR DETERMINING RATES. — That courts may regulate the rates of public service companies is unquestioned.[1] From decisions holding that rates may be reduced to any extent provided some compensation is secured to the company,[2] the law has changed so that at present a reasonable return on the property must be left.[3] What is a reasonable return is a judicial question; a court cannot establish rates at common law,[4] but may upset existing rates.[5]

Much confusion has existed regarding the proper basis of valuation upon which a reasonable return may be earned.[6] It is submitted that this is due to the failure to appreciate the distinction between the case of a protest against rates established by the company, and the company's attack on the rates promulgated by a legislature or commission. Rates, which allow no more than a fair profit upon the capital actually but properly and reasonably put into the business, should not be disturbed in the first class of cases; [7] but in the latter, rates are unreasonably low only when they take property without due process of law, and the property affected is not the original investment, but the existent property used by the company.[8] This distinction has not been taken generally, due perhaps to the fact that the mass of cases are of the latter type, which establish by the great weight of authority that the basis on which a return may be earned is the fair value of the property at the time it is

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[22] It is thus distinguished from most of the statutes, but the preliminary seizure of the property insures its constitutionality as a proceeding *in rem*. Pennoyer *v.* Neff, 95 U. S. 714. The statute as a whole is modelled on well-recognized legal analogies and it remedies a procedural defect whereby the inconclusiveness of mistaken adjudications of death works a hardship upon innocent parties which has caused much protest. See 14 AM. L. REV. 337; 22 CENT. L. J. 484; 10 HARV. L. REV. 62.

[1] Munn *v.* Illinois, 94 U. S. 113.

[2] Chicago & N. W. Ry. Co. *v.* Dey, 35 Fed. 866.

[3] Stanislaus County *v.* San Joaquin & King's River Canal & Irrigation Co., 192 U. S. 201, 24 Sup. Ct. 241.

[4] Osborne *v.* San Diego Land & Town Co., 178 U. S. 22, 20 Sup. Ct. 860.

[5] Spring Valley Water Works *v.* City & County of San Francisco, 124 Fed. 574.

[6] In Brymer *v.* Butler Water Co., 179 Pa. St. 231, 36 Atl. 249, the proper basis was held to be the actual cost of the plant to the owners, and this decision has been followed in Coal & Coke Ry. Co. *v.* Conley & Avis, 67 W. Va. 129, 67 S. E. 613; in San Diego Water Co. *v.* City of San Diego, 118 Cal. 556, 50 Pac. 633; and in City of Wilkes-Barre *v.* Spring Brook Water Supply Co., 4 Lack. Leg. N. (Pa.) 367. In Smyth *v.* Ames, 169 U. S. 466, 18 Sup. Ct. 418, the basis is the actual value of the property. The cost of reproduction is the sole criterion in Steenerson *v.* Great Northern Ry. Co., 69 Minn. 353, 72 N. W. 713.

[7] BEALE & WYMAN, RAILROAD RATE REGULATION, § 339.

[8] 2 WYMAN, PUBLIC SERVICE CORPORATIONS, § 1112.